

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No 5583 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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YUSUF SHA MOHAMMED SHA FAKIR

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Mr. H.R. Prajapati for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 23rd April 1996, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985, by the District Magistrate, Rajkot.

The detention order dated 23rd April 1996 was executed on 26th April 1996 and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj.

The present Special Civil Application was filed in this Court on 30th July 1996 and on 31st July 1996, rule returnable on 19th August 1996 was issued. Returnable date was then extended till 16th September 1996. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that two criminal cases for the offences punishable under Sections 323, 504, 506 and 114 of Indian Penal Code were registered against the petitioner, and both these cases are pending trial before the court. The detaining authority has held that the petitioner is engaged in anti-social activities and he is required to be detained as a dangerous person. Besides the allegations and two criminal cases as aforesaid, the detaining authority has also taken into consideration the statements made by seven witnesses in all who have stated against the petitioner's anti-social activities.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that the statements of two witnesses, i.e., witnesses Nos. 1 and 2, have not been supplied along with the grounds of detention and, therefore, the detention order stands vitiated, because the petitioner's right to make an effective representation under Article 22(5) of the Constitution of India has been violated.

I have carefully considered the submissions made by learned advocates for both the parties.

Learned Additional Public Prosecutor has not been able to controvert - rather - it is admitted that the copies of the statements of witnesses Nos. 1 and 2 had not been supplied to the petitioner along with the grounds of detention or thereafter, and the allegations made in this regard in paragraph 35 of the petition remain uncontroverted. The detaining authority has claimed privilege under Section 9(2), but privilege under Section 9(2) can only be used to withhold the identity of the witnesses who have made statements. Nevertheless, copies of the statements of the witnesses ought to have been supplied to the petitioner along with the grounds of detention. That having admittedly not been done, the order of detention cannot be sustained in the eyes of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 23rd April 1996, passed by the District Magistrate, Rajkot, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at liberty, if not required in any other cases. Rule is made absolute.

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